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INTRODUCTION

HUMAN RIGHTS, FREEDOM OF RELIGION OR BELIEF, AND THE CHURCH

Göran Gunner, Pamela Slotte and Elizabeta Kitanović

Introduction

The Conference of European Churches (CEC) has a long-standing record of promoting human rights.¹ A milestone was the 2012 publishing of the human rights manual *European Churches Engaging in Human Rights*.² A special working group on human rights and freedom of religion or belief has been set up. Several seminars and consultations have taken place in order to highlight human rights and freedom of religion or belief including “Religious freedom and cultural heritage in Cyprus: Working for unity in a divided land” (2015), “Advancing Freedom of Religion or Belief for

¹ For details see Rüdiger Noll and Elizabeta Kitanović, “Preface” in *European churches engaging in human rights*, edited by Elizabeta Kitanović. Bruxelles: Church and Society Commission of CEC 2012, 5-7.

² See <http://www.ceceurope.org/human-rights/education/> [accessed 15 Dec. 2017].

All”³ (2015), “Consultation on Religious Minorities as Part of Culturally Diverse Societies” (2016), and “Protection of Holy Sites and Worship Places in Europe and the Middle East in Cyprus” (2017) and “Towards Peaceful Coexistence in the Middle East: Challenges and Opportunities” (2018). Of special importance has been the establishment of the Summer School on Human Rights with a different focus each year: “Churches’ Voice on Human Rights – Training on Social, Economic and Cultural Rights in the Euromediterranean Region” (2013), “Advancing Freedom of Religion or Belief for All” (2014), “Churches address anti-discrimination” (2015), “Stand Up for Women and Children’s Rights” (2016) and “Rights under Threats – Stand Up for Refugees’ and Migrants’ Rights” (2017). The Summer School 2018 dealt specifically with “Freedom of Religion or Belief and Populism”.

The present manual – *Human Rights, Religious Freedom and Faces of Faith* – is part of the ongoing work done by CEC Member Churches to advocate for the promotion and protection of human rights at the highest standards inside Europe and beyond its borders. The manual has been divided into four parts that each cover specific aspects of human rights and freedom of religion or belief.

PART I relates closely to issues connected to freedom of religion or belief and consists of two sections. The first section – this introduction – takes into consideration *Human Rights, Freedom of Religion or Belief, and the Church*. It includes a basic introduction to freedom of religion or belief in the European setting, both through mechanisms within the Council of Europe and the European Union. The second section – *The Rights of the Religious Minorities* – deals with the specific situation facing several of the CEC member-churches as well as other religious denominations and groups, namely the minority position vis-à-vis a majority religion or Christian denomination in the country.

³ See http://www.globethics.net/documents/4289936/17575651/GE_CEC_3_web.pdf/5747ccc9-6362-4721-82c3-b616382a5d29 [accessed 15 Dec. 2017].

PART II offers examples of the situation with regard to freedom of religion or belief inside Europe. Nine countries have been chosen from different geographical parts of Europe and selected also in order to give examples from different minority-majority religious settings: Great Britain and Norway with traditionally Anglican and Lutheran majorities; France and Italy with traditionally Catholic majority; Montenegro, Belarus and Cyprus with traditionally Orthodox Christian majorities, Turkey with a Muslim majority and Estonia where a minority of the population considers themselves to adhere to any creed.

PART III, in turn, provides some examples of the situation with regard to freedom of religion or belief outside of Europe. Six countries have been selected. Two are from Africa – Egypt and Nigeria – while four are from Asia – India, Iraq, Pakistan and Syria.

Finally, in PART IV the manual highlights four different issues putting human rights in focus: *The Rights of Women*, *The Rights of Prisoners*, *The Rights of Persons with Disabilities* and *The Rights of Indigenous People*.

History of Freedom of Religion or Belief

The history of human rights has been the topic of extensive research during the last decade. The purpose of this newer historiography has been to revisit, and also in part challenge, common perceptions and portrayals of what the history of human rights is all about.⁴ Needless to say that upon

⁴ See, e.g., Stefan-Ludwig Hoffmann (ed.), *Human Rights in the Twentieth Century*. New York: Cambridge University Press, 2010; Samuel Moyn, *The Last Utopia: Human Rights in History*. Cambridge, MA: Harvard University Press, 2010; Akira Iriye, Petra Goedde & William I. Hitchcock (eds.), *The Human Rights Revolution: An International History*. Oxford: Oxford University Press, 2012; Pamela Slotte & Miia Halme-Tuomisaari (eds.), *Revisiting the Origins of Human Rights*. Cambridge: Cambridge University Press, 2015; Steven L. B. Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the*

closer inspection this history turns out to be multifaceted and it is by no means a simple unilinear success story of increased comprehensive protection of human rights all over the world, including by and within the churches.

The same is the case if we look more closely at the history of the freedom of religion or belief.⁵ Ideas of some form of freedom in matters of faith – for individuals and especially for communities – can be found throughout much of history. Concepts such as human dignity, natural rights, conscience and tolerance have played a role here. However, these ideas of individual and collective freedom in matters of faith, and which frequently have been inspired by religious, theological and philosophical convictions, have not been uniform. They have taken different forms and often enough in practice led to protection of some persons and groups rather than other persons and groups. Citizenship, race, abilities and faculties, gender and other statuses, positions or capacities, have played a role when protection including in matters of faith has been afforded or not afforded to a person or group. Protection has not been all-encompassing, and as we will see in this volume is not so even today.

Reconstruction of Global Values. Cambridge: Cambridge University Press, 2016; Samuel Moyn, *Not Enough: Human Rights in an Unequal World*. Cambridge, MA: Harvard University Press, 2018. See also for comparison, for example, the slightly earlier contribution by Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia, PA: University of Pennsylvania Press, 1998), as well as Micheline Ishay, *The History of Human Rights* (Berkeley, CA: University of California Press, 2008).

⁵ See, e.g., Malcolm D. Evans, *Religious Liberty and International Law in Europe*. Cambridge: Cambridge University Press, 1997; Samuel Moyn, *Christian Human Rights*. Philadelphia, PA: University of Pennsylvania Press, 2015; Anna Su, *Exporting Freedom: Religious Liberty and American Power*. Cambridge, MA: Harvard University Press, 2016; Linde Lindkvist, *Religious Freedom and the Universal Declaration of Human Rights*. Cambridge: Cambridge University Press, 2017.

Turning to recent history, the protections of collective religious freedom that were included in the minority treaties drafted under the auspices of the League of Nations during the first half of the 20th century in the aftermath of World War I are typically acknowledged as milestones of sorts at the level of modern international law. However, the regime was ultimately unsuccessful, and subsequently by the mid-20th century succeeded by the United Nations with its own protective framework for human rights, including freedom of religion or belief. This is a framework which holds importance still today, alongside various regional human rights regimes.

Forms of Codification

Freedom of religion or belief currently enjoys legal protection at both national and international levels. Turning to the most important regional and global human rights treaties, we find they all include provisions on the protection of freedom of religion or belief, not the least of which is Article 18 of the Universal Declaration of Human Rights (UDHR, 1948):

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

As a result of the work of the United Nations in translating the rights declared in the UDHR into legally binding human rights treaties, Article 18 of the International Covenant on Civil and Political Rights (ICCPR, 1966) states that:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or

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in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. respect the exclusive character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 27 of the ICCPR, in turn, provides that:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The treaty body Human Rights Committee publishes its interpretation of the provisions of the treaty in the form of "general comments". Article 18 is dealt with in General Comment 22 – "The right to freedom of thought, conscience and religion". Here is stated that the concepts religion and belief are to be broadly construed including protection of "theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief". It is also concluded that the manifestation of religion in

worship, observance, practice and teaching encompasses a broad range of acts:

including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as, *inter alia*, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.⁶

In 1981 the UN General Assembly adopted a resolution – The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Articles 2 through 4 deal with discrimination based on religion or belief, Article 5 with the parents/ legal guardians and the child, and Article 6 with manifestations of religion.⁷

One more UN document needs to be mentioned – The Convention on the Rights of the Child (CRC), adopted by the UN General Assembly 1989. Article 14 declares:

⁶ For the entire text of the General Comment 22, see “Human Rights Bodies”. https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11 [accessed 15 Dec. 2017].

⁷ “General Assembly”. <https://www.un.org/documents/ga/res/36/a36r055.htm> [accessed 15 Dec. 2017].

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.⁸

Furthermore, Article 27 recognises “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development” but without a definition of “spiritual”.

Looking towards the regional level, Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950) provides that:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the

⁸ *Convention on the Rights of the Child*. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [accessed 15 Dec. 2017].

protection of public order, health or morals, or the protection of the rights and freedoms of others.⁹

The European Court of Human Rights (ECtHR) has jurisdiction to hear allegations of violations of the ECHR.¹⁰ The applications may be individual or inter-State. A European case law has developed based on the court decisions.¹¹

In the EU, freedom of thought, conscience and religion is protected by the ECHR, Article 9 and is also stated in the European Charter of Fundamental Rights, Article 10.¹² Judgments and orders from the European Court of Justice have also developed a case law.¹³ In 2013, the EU adopted special guidelines on the promotion and protection of freedom of religion or belief. Four basic overriding principles of action are mentioned:¹⁴

⁹ For the history of the European human rights system and the ECHR, see, e.g., A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention*. Oxford: Oxford University Press, 2004; Marco Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention*. Oxford: Oxford University Press, 2017.

¹⁰ “European Convention on Human Rights”. <https://www.echr.coe.int/> [accessed 10 Jan. 2019].

¹¹ For case law based on the European Court of Justice, see “HUDOC”. <https://hudoc.echr.coe.int/eng> [accessed 10 Jan. 2019] and “Guide on Article 9 of the European Convention on Human Rights” https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf [accessed 10 Feb. 2019].

¹² “EU Charter of Fundamental Rights”. <https://fra.europa.eu/en/charterpedia/article/10-freedom-thought-conscience-and-religion> [accessed 10 Jan. 2019].

¹³ For EU case law, see “Case law”. <https://eur-lex.europa.eu/collection/eu-law/eu-case-law.html> [accessed 10 Jan. 2019].

¹⁴ “EU Guidelines on the promotion and protection of freedom of religion or belief”. <https://eeas.europa.eu/sites/eeas/files/137585.pdf> [accessed 10 Jan. 2019].

1. Universal character of freedom of religion or belief.
2. Freedom of religion or belief is an individual right which can be exercised in community with others.
3. Primary role of States in ensuring freedom of religion or belief.
4. Connection with the defence of other human rights and with other EU guidelines on human rights.¹⁵

The Organization for Security and Co-operation in Europe (OSCE) also work on assisting participating States, religious or belief communities and civil society in protecting and promoting the right to freedom of religion or belief. This is specially done through OSCE Office for Democratic Institutions and Human Rights (ODIHR). Among the useful material presented are *Guidelines for Review of Legislation Pertaining to Religion or Belief* (2004), *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools* (2007) and *Guidelines on the Legal Personality of Religious or Belief Communities* (2015).¹⁶

The African Charter on Human and Peoples' Rights (1981), in turn, proclaims in Article 8 that:

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

The Organization of American States (OAS) states in the American Declaration of the Rights and Duties of Man:

Every person has the right freely to profess a religious faith and to manifest and practice it both in public and in private (Article III).

¹⁵ "EU Guidelines on the promotion and protection of freedom of religion or belief", *ibid*.

¹⁶ "Freedom of religion or belief". <https://www.osce.org/odihr/freedom-of-religion-or-belief> [accessed 10 Jan. 2019].

Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union, or other nature (Article XXII).

Article 12 on the Freedom of Conscience and Religion of the OAS American Convention on Human Rights is also important:

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Finally, the Special Rapporteur on freedom of religion or belief is appointed by the UN Human Rights Council as an independent expert. The Rapporteur's mandate includes "to identify existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief" and "to promote the adoption of measures at the national, regional and international levels to ensure the promotion and protection of the right".¹⁷

¹⁷ "Special Rapporteur on freedom of religion or belief". <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FreedomReligionIndex.aspx> [accessed 15 Dec. 2017].

Legal Dogmatics

As the overview of key parts of the international and regional human rights framework shows, the right to freedom of religion or belief encompasses both a right to believe and a right not to believe, a right to participate in religious worship, observation, practice and teaching, and to abstain from participation in the same. However, not all acts that are inspired, motivated or influenced by belief constitutes a manifestation of it for purposes of legal protection. According to the ECtHR, for example, a “manifestation” within the meaning of Article 9 must be intimately connected to religion or belief. The ECtHR decides whether this is the case based on the facts of each individual case.¹⁸

It is further possible to talk about positive and negative aspects of freedom of religion or belief (FoRB). This is basically not connected to individual aspirations of not seeing any signs of religion in the public sphere, instead it relates to the obligations of the contracting state. On the one hand, the state has a negative duty to refrain from interfering with the rights guaranteed – to respect the rights in question. On the other hand, the state has positive obligations to take active steps to safeguard, promote and protect those rights within its territory, including by seeing to it that other actors respect them.

The boundaries between the State’s positive and negative obligations under the Convention do not lend themselves to precise definition... in both situations – whether the obligations are positive or negative – the State enjoys a certain margin of appreciation...¹⁹

¹⁸ For details see: “Overview of the Court’s case-law on freedom of religion,” Council of Europe/European Court of Human Rights. https://www.echr.coe.int/Documents/Research_report_religion_ENG.pdf [accessed 15 May 2019].

¹⁹ *Mouvement Raëlien Suisse v. Switzerland* (Application no. 16354/06, 13 July 2012), para. 50.

The right to freedom of religion or belief is an individual right but it is clearly also recognised that it is a right that in many important respects is exercised in community with others. So, the right to freedom of religion or belief has both individual and collective aspects. Most of the FoRB-rights, as in the ECHR Article 9, are individual rights but the ECtHR has recognised that an ecclesiastical body may exercise rights on behalf of its members. Furthermore, “the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords”.²⁰ In consequence, religious communities enjoy freedom under Article 9 to decide themselves on matters of doctrine and how to communicate these for example through rituals, and on matters of membership and leadership in the sense of whom they wish to entrust with religious tasks.²¹ How far the legal right to freedom of religion or belief as a collective right stretches beyond such ‘core’ issues is a matter of ongoing discussion and negotiations.²² It is also important to mention in this context that the individual legal right to freedom of religion or belief “does not guarantee any right to dissent within a religious body”, but this right can be exercised through leaving the religious community in question.²³

As can be deduced already from the discussion in this section, as well as from the short glance above at the various Articles enshrining a legal

²⁰ “Overview of the Court’s case-law on freedom of religion,” Council of Europe/European Court of Human Rights. https://www.echr.coe.int/Documents/Research_report_religion_ENG.pdf [accessed 15 May 2019].

²¹ See, e.g., *Hasan and Chaush v. Bulgaria* (Application no. 30985/96, 26 Oct. 2000), paras. 60 and 62, and *Fernández Martínez v. Spain* (Application no. 56030/07, 12 June 2014), para. 127.

²² See, e.g., the various contributions to the Special issue on the Ministerial Exception, *Oxford Journal of Law and Religion* 4:2 (2015), edited by Pamela Slotte and Helge Årsheim.

²³ *Sindicatul “Păstorul cel Bun” v. Romania* (Application no. 2330/09, 9 July 2013), para. 123.

right to freedom of religion or belief at the international level, the rights are *qualified* in various ways. They are situated in the context of a human life lived together with others in a society. This fact also means that to some extent those same rights sometimes need to be restricted if the aim for such a restriction is *legitimate* and does not violate the *core* of the right, for example, in order to protect other person's rights and freedoms, but sometimes also for the sake of safeguarding peaceful co-existence, law and order more generally in society.

This also means that we cannot deduce the *actual* scope of such legal rights as the ones mentioned above, simply from reading the texts itself. Rights always have to be and are interpreted in context and states that have ratified international human rights treaties are allowed, within certain limits naturally, to decide how they will implement those rights in their own countries, and the level of rights protection that they will provide for their citizens and others in their countries. These national interpretations are, however, subject to international review and oversight.

With regard to the ECHR, for example, it is usually said that the jurisprudence of the ECtHR is set to interpret the ECHR in cases that comes before it as possible cases of human rights violations. This gives us an idea of the *minimum* level of protection that states that are members to the convention have to provide in order not to be found in violation of the convention. However, they can always also go beyond this and provide more extensive protection.

Current Challenges for the European Churches

Freedom of religion or belief is an everyday challenge for some churches as well as other religious communities in Europe and outside of Europe. The legal framework on freedom of religion or belief is challenged very much by rising populism and xenophobia on the European and global

levels. Today we can witness the changing religious landscape in Europe. Also, there are long and ongoing cases of the violation of freedom of religion or belief relating to old-standing conflicts. In the EU in some member states like Croatia, the legal framework is sufficient, but implementation is not at a satisfactory level for religious minorities. In Spain, the Spanish Evangelical Church faces discrimination based on religion or belief in terms of social security, which is threatening to bankrupt the church. In Cyprus, the Church of Cyprus does not have access to its property since 1974 and the majority of church monuments are in the state of collapse.²⁴ In Bulgaria, another EU member state, a draft 2018 law on religious freedom was very much challenged for its imposing limitations on both majorities and minorities. These are just some challenges that were discussed at a CEC event on human rights within the EU, held on Human Rights Day (10 December) in 2018.

Some CEC Member Churches are coming from countries that are not members of the EU, but are members of the Council of Europe. Freedom of religion or belief remains an issue also for them. In Montenegro, there is ongoing discussion on the new religious freedom law, in Kosovo (UNSR 1244) where monastic life develops under the NATO peace-support operation (KFOR) since 1999, in Turkey with ongoing issues regarding the legal status for the churches, in Armenia with non-recognition of the genocide by Ottoman Turkey, in Lichtenstein there is non-existent legal framework for religious minorities and all residents are obliged to finance through their taxes the Roman Catholic state church. In Russia the Jehovah's Witnesses community face severe restrictions when it comes to practicing their religion and in Ukraine there is an issue with changing jurisdictional allegiance which affects the status of property and struggles between the communities. In 2018 in Iceland

²⁴ "Turkish Cypriot side restricts Orthodox church services in north" <http://cyprus-mail.com/2016/05/24/turkish-cypriot-side-restricts-orthodox-church-services-north/> [accessed 10 Feb. 2019].

churches supported religious freedom while defending the rights of Jews and Muslims to continue practicing circumcision considering a draft law forseeing a ban of circumcision.

There are numerous unresolved challenges in many European countries with regard to religious freedom, including getting licences for religious leaders and professional religious staff who come from abroad to serve in the particular community, as well as the right of importing religious books and materials. On the other hand, in the area of human rights and religious freedom churches from the Middle East, Africa and Asia are asking for help from their European brothers and sisters in addressing human rights violations vis-à-vis the European Union due to ongoing economic and trade agreements with other continents. European churches remain concerned with rising antisemitism and Islamophobia and hate speech against religious communities and individuals leading to hate crime. Discrimination based on religious grounds remains an ongoing issue. Churches do put their efforts toward eradicating this and defending the rights of religious minorities. Therefore, in its ongoing work, CEC will seek to address as many issues as possible relating to helping minorities and majorities in addressing the issue of freedom of religion or belief vis-à-vis various international organisations.